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No. 00-1875

Supreme Court, U.S.
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In the Supreme Court of the United States

THE CONSUL GENERAL FOR THE REPUBLIC OF POLAND IN CHICAGO and GREGORY A. MADEJ,

Petitioners,

vs.

ILLINOIS, JAMES M. SCHOMIG, Warden, Pontiac Correctional Center, DONALD P. O'CONNELL, Chief Judge of the Circuit Court of Cook County, and THE CIRCUIT COURT OF COOK COUNTY,

Respondents.

On Petition for Writ of Certiorari to the Illinois Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether a grant of certiorari is warranted in this case where the Illinois Supreme Court's decision, on its face, indicates that it is based on *bona fide* separate, adequate, and independent state grounds; where, in its decision, the Illinois Supreme Court acted within this Court's precedents; and where the petition poses no important, properly presented question of federal law?

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735 ILCS 5/2-1401 . . . . . *passim*

OPINIONS BELOW

The opinion of the Illinois Supreme Court is reported as *People v. Madej*, 193 Ill. 2d 395, 739 N.E.2d 423 (2000).

JURISDICTION

Petitioners claim jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioners' statement of constitutional and statutory provisions is complete and correct.

STATEMENT OF THE CASE

Procedural Background

Petitioner Gregory Madej [hereinafter "Madej"] was sentenced to death upon his conviction for murder, rape, deviate sexual assault and armed robbery in 1982. The Illinois Supreme Court affirmed his convictions and sentences in *People v. Madej*, 106 Ill. 2d 201, 478 N.E.2d 392 (1985) [*"Madej I"*], *cert. denied sub nom. Madej v. Illinois*, 474 U.S. 106 S.Ct. 268 (1985), *reh'g denied*, 474 U.S. 1038, 106 S.Ct. 608 (1985). Subsequently, the Circuit Court of Cook County denied Madej's amended petition for relief filed pursuant to the Illinois Post-Conviction Hearing Act. The Illinois Supreme Court affirmed the denial of post-conviction relief in *People v. Madej*, 177 Ill. 2d 116, 685 N.E.2d

908 (1997) ["*Madej II*"], *cert. denied sub nom. Madej v. Illinois*, 523 U.S. 1098, 118 S. Ct. 1565 (1998).

In 1998, Madej filed in the Illinois Supreme Court a motion for leave to file a petition for an original writ of *mandamus*, seeking relief pursuant to Article IV, Section 4(a) of the Illinois Constitution and Supreme Court Rule 381. *Madej v. O'Connell*, No. 85534. He based this motion on the claim at issue in this cause—that the State of Illinois violated his rights under Article 36 of the Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820 [the "Vienna Convention"] and Article 29 of the Consular Convention, May 31, 1972, U.S.—Pol., 24 U.S.T. 1231, T.I.A.S. No. 7642 [the "Consular Convention"]. The Republic of Poland filed a formal diplomatic note with the United States Department of State on June 10, 1998, expressing concern over the Vienna Convention transgression. The Illinois Supreme Court denied Madej's motion.

Thereafter, Madej filed a petition for post-judgment relief pursuant to 735 ILCS 5/2-1401 [hereinafter "§ 2-1401 petition] in the Criminal Division of the Circuit Court of Cook County, as well as a petition for writ of *mandamus* pursuant to 735 ILCS 5/14-101 in the Chancery Division of the Circuit Court of Cook County. Presiding Judge Albert Green transferred the chancery case to the Criminal Division for consolidation with the criminal case after granting the Polish Consul General's motion for intervention.

In the consolidated matter, then-presiding Judge Thomas R. Fitzgerald entered judgment denying both petitions without an evidentiary hearing on May 5, 1999. Judge Fitzgerald also denied the Polish Consul

General's request to intervene in the criminal matter. However, inasmuch as the Chancery Division had allowed the Consul General to intervene, Judge Fitzgerald took the Consulate's petition into consideration in his ruling. Ultimately, Judge Fitzgerald concluded that the § 2-1401 petition was barred by the two-year statute of limitations, and that the *mandamus* petition failed because such a cause of action may not be used as a substitute for seeking traditional post-judgment relief in a criminal case when the issues and relief sought are the same. In an alternative holding, Judge Fitzgerald noted that even were the claims properly raised, his Consular Convention claim would fail because there was no violation of that treaty, and the Vienna Convention claim would not succeed because, although the State did violate Article 36 by failing to advise Petitioner of his right to speak to the Polish Consulate, Madej nonetheless failed to show that the denial of consular notification rights prejudiced or otherwise changed the outcome of his trial. Also assuming, *arguendo*, that the *mandamus* action had survived the procedural barriers, Judge Fitzgerald found that it too would fail for the same reasons as the § 2-1401 petition.

Upon appeal to the Illinois Supreme Court, that court granted Petitioners' motion to consolidate the cases on appeal. The United Mexican States, the Federal Republic of Germany, and The Human Rights Committee of the Bar of England and Wales were granted leave to file amicus briefs in support of Petitioners.

The Illinois high court concluded that Petitioners' § 2-1401 petition was time-barred. It also rejected, under state law, Petitioners' argument that the petition was

not time-barred because: 1) Madej's conviction and sentence are void under customary international law; 2) the Consul General "only recently became aware that the State of Illinois had tried and sentenced its national to death"; and 3) the State of Illinois fraudulently concealed from Madej the fact that the Vienna Convention gave him the right to consular assistance. The Illinois court also found that, based on this Court's precedent and the language of the treaty itself, both which indicate that the procedural rules of the forum state court's rules and regulations govern the implementation of the treaty in that state, § 2-1401's statute of limitations does not violate international law. Finally, the court concluded that, under state law, *mandamus* relief was not appropriate in Petitioners' case.

Statement of Facts

Ms. Doyle's naked body was found in an alley on the north side of Chicago in the early morning hours of August 23, 1981. *Madej II*, 177 Ill.2d at 123-24. She had been stabbed and slashed 34 times. *Id.* at 124. A post-mortem examination revealed the presence of numerous abrasions over various parts of her body as well as semen in her vagina[1] and rectum. *Id.* Petitioner was arrested in Ms. Doyle's automobile after a high-speed chase. *Id.* His hands, head, shirt, pants and undershorts were splattered with blood, as was Ms. Doyle's

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[1] DNA testing done earlier this year at the Centre of Forensic Sciences in Toronto, Ontario revealed that the source of the spermatozoa from Barbara Doyle's vaginal slide and Gregory Madej's genetic profile are the same.

car, mostly in the area of the passenger's seat. *Id.* Upon searching the vehicle, police recovered a large knife as well as Ms. Doyle's jeans and blouse, both of which were saturated in blood. *Id.*

Gregory Madej's Personal History

Gregory Madej was born in Kielce, Poland on August 25, 1959. (Pet. app'x vol. I, ex. F-6, p. A 104.)[2] Both of his parents were born and raised in Poland. (*Id.*). In 1960, when Madej was less than a year old, his father, Kazamier Madej, came to the United States to look for work. (*Id.* at pp. A 104, A 111). He settled in Chicago and soon obtained work as a laborer. (*Id.* at p. A 104). In March, 1961, he sent for his wife, Helena, and his son, Gregory, who was then a year and a half old. (*Id.*).

Neither Madej nor his parents ever became naturalized American citizens. (*Id.* at p. A 111). At the time of his arrest, Madej was classified in this country as a lawful permanent resident alien. (*Id.* at ex. K, p. A 332).

Madej grew up in two different cultures. (*Id.* at ex. F6, p. A111). As a child, he attended Polish school every Saturday, where he learned the history and culture of Poland, and to read and write the Polish language. (*Id.*). At home with his family, where Polish was always spoken, a strong effort was made to retain the

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[2] Citations to this exhibit are to a social history investigative report prepared by Jill Miller, MSSW, who was retained by petitioner's attorney on post-conviction review. The exhibit was included in the Appendix Petitioner's filed in the Illinois Supreme Court.

family's ethnic identity. (*Id.*). During the summers of 1973 and 1974, Madej and his brother even had the opportunity to spend time in Poland visiting relatives. (*Id.* at p. A 106). Back in Chicago, however, at school and in the community, Madej was part of the mainstream American culture. (*Id.* at p. A 111). Indeed, literature of second generation Poles addresses their need to eschew their own culture and identify with the American culture. (*Id.*). Madej's cousin, Roman, who moved to Chicago in 1973 and lived with the family from 1973 until 1978, believed that part of the problem Gregory had with his father[3] was cultural . . . "'his father doesn't speak English . . . he didn't understand Greg.'" (*Id.* at p. A 107). Moreover, as late as 1991, Madej expressed strong anti-communist views, which social investigator, Jill Miller, theorized was "undoubtedly a product of his native country's history." (*Id.*).

Madej attended various local grade schools as a child in Chicago. (*Id.* at p. A 109). Through the eleventh grade, until he enlisted in the United States Army, he attended Foreman High School, where he participated in ROTC. (*Id.* at pp. A 109, A 112). While in the Army, he spent time in Korea and earned his GED. (*Id.* at p. A 112). In 1977, he was granted an honorable discharge and returned home to Chicago. (*Id.*). In June, 1977, Madej enrolled at Triton College, but withdrew in late fall of that year, citing financial difficulties. (*Id.* at p. A 109). As his "rap sheet" indicates, this time period marked the beginning of a long string of arrests that

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[3] *See Madej II*, 177 Ill. 2d at 130 (describing opinion of petitioner's psychiatric expert that petitioner was "physically and verbally abused" by his father).

culminated in Madej's arrest for Barbara's Doyle's murder in 1981. (*Id.* at Ex. F10, p. A 143).

Madej left Chicago in late summer, 1978, and traveled around the United States for several months. (*Id.*). He spent a couple months in California where he worked part-time, doing odd jobs. (*Id.*). He returned to Chicago for a while in late 1978, and was then arrested for theft and sentenced to one year probation. (*Id.* at p. A 112; ex. F10, p. A 143). Madej then went back to California, but in February 1979, returned to Chicago. Shortly thereafter, he was arrested again, found to be in violation of probation, and sentenced to 18 months in the Illinois Department of Corrections. (*Id.* at pp. A 112, A 116, A 143-44).

Madej had only been on parole for approximately eleven months when he was arrested for the murder of Barbara Doyle. (*Id.* at p. A 115). When he was taken into custody, he was read his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966) and interrogated as to his activities on the day of the murder. *Madej I*, 106 Ill. 2d at 208. At no time was Madej advised of any consular notification rights under the Vienna or Consular Conventions. (C. 273).

An assistant public defender was originally appointed to represent Madej. (Rpt. from 1st p.c. proc'gs, Aug. 12, 1993, vol. 6, p. 8). However, Madej discharged that attorney and his family retained Phillip Igoe, a Chicago attorney, to represent him. (*Id.*). Igoe continued to represent Madej through his trial and sentencing hearing. (Pet. app'x vol. I, ex. F 1, p. A 67).

REASONS FOR DENYING THE WRIT

I

THE ILLINOIS SUPREME COURT'S DECISION ON ITS FACE INDICATES THAT IT IS BASED ON BONA FIDE SEPARATE, ADEQUATE, AND INDEPENDENT STATE GROUNDS AND, THEREFORE, PURSUANT TO *MICHIGAN v. LONG*, 463 U.S. 1032 (1983), THIS COURT SHOULD NOT UNDERTAKE TO REVIEW THE DECISION OF THE ILLINOIS COURT.

This case presents a jurisdictional question that the Court need address before reaching any question concerning the Vienna Convention on Consular Relations. This Court will not review a question of federal law raised in a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). This rule applies whether the state law ground is substantive or procedural. *Id.* In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional. *Id.* Because this Court has no power to review a state law determination that is sufficient to support the judgment, resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory. *Id.*

A. *735 ILCS 5/2-1401; Relief from judgment*

In the present case, the Illinois Supreme Court found that Petitioners' § 2-1401 petition was time-barred. (Appendix A to Cert. Pet. at 5a-6a). The court then addressed each of Petitioners' claimed exceptions to § 2-1401's statute of limitations. Each is addressed below.

1. *Under international law, Gregory Madej's conviction and sentence are void.*

Although acknowledging that *restitutio in integrum* plays an important role in international law, the Illinois Supreme Court noted that Petitioners had failed to cite to any authority to support a conclusion that the principle renders Madej's conviction and death sentence void. (*Id.* at 7a). The court then plainly stated that, under Illinois law, "an order is void if it was entered by a court that lacked jurisdiction of the parties or of the subject matter or that lacked the inherent power to make or enter the particular order involved." (*Id.*, citing *R. W. Sawant & Co. v. Allied Programs Corp.*, 111 Ill. 2d 304, 309 (1986)). The state high court then noted that the trial court clearly had jurisdiction of the parties and of the subject matter and the inherent power to make or enter the orders involved. (*Id.*). Consequently, the supreme court refused to conclude that Madej's conviction and sentence are void under state law. (*Id.*).

2. *The Consul General only recently became aware that the State of Illinois had tried and sentenced Madej to death.*

Noting that its own case law is clear, the Illinois Supreme Court held that the two-year limitation period mandated by § 2-1401 must be adhered to in the absence of a clear showing that the person seeking relief is under legal disability or duress or the grounds for relief are fraudulently concealed. (*Id.* at 8a, citing *People v. Caballero*, 179 Ill. 2d 205, 211 (1997)). Concluding that the Consul General was not alleging any of the above, the court plainly stated that, under state law,

the Consul General was not entitled to seek relief under § 2-1401 outside of the limitation period. (*Id.*).

3. *Allegation that State fraudulently concealed fact that Vienna Convention gave Madej right to consular assistance.*

The Illinois Supreme Court held that to toll the limitation period of § 2-1401, the alleged fraud must consist of "'affirmative acts or representations designed to prevent discovery of the cause of action or ground for relief.'" (*Id.* at 9a, citing *Cromwell v. Bilandic*, 81 Ill. 2d 422, 428 (1980)). The court then went on to hold that even if it accepted Petitioners' contention that the State was obligated to inform Madej of his rights under the Vienna Convention, it could not conclude that the State's failure to do so constituted fraud under state law because the rights are a matter of public record. (*Id.*).

B. *Mandamus Proceeding*

Acknowledging that Petitioners' action may involve issues of "'great public importance and of great importance to the administration of justice,'" the Illinois Supreme Court nonetheless found that, "in and of itself," that is not a reason to grant *mandamus* relief. (*Id.* at 11a). The court noted that under Illinois law, it would not issue a writ of *mandamus* absent a showing of "'a clear, affirmative right to relief, a clear duty of the [public officer] to act, and clear authority in the [public officer] to comply with the writ, and concluded that absent such a showing, it must refuse to issue a writ. (*Id.*, citing *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999)).

C. *Conclusion*

In conclusion, the Illinois Supreme Court's decision on its face constitutes a plain statement that it is based on bona fide separate, adequate, and independent state grounds. Therefore, pursuant to *Michigan v. Long*, 463 U.S. 1032 (1983), this Court should not undertake to review the decision of the Illinois Supreme Court.

II.

APPLYING THE RULE 10(c) CRITERIA, THERE IS NO BASIS FOR CERTIORARI. THERE IS NO CONFLICT WITH ANY DECISION OF THIS COURT. THERE IS NO IMPORTANT, PROPERLY PRESENTED QUESTION OF FEDERAL LAW.

In the Illinois Supreme Court, as well as in this Court, Petitioners argued that a domestic court's reliance on a procedural rule to bar their cause of action violates international law. Relying on this Court's precedents and the plain language of the treaty itself, the Illinois Supreme Court concluded that because the Vienna Convention specifically states that the forum court's rules and regulations will govern the implementation of the treaty in that state, it would refuse to conclude that the reasonable limitation period of § 2-1401 violates international law. (*Id.* at 10a), citing *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 700 (1988); *Breard v. Greene*, 523 U.S. 371, 375 (1998)). Moreover, as this Court also noted in *Breard*, "[a]lthough treaties are recognized by our Constitution as the supreme law of the land, that status is no less true of provisions of the Constitution itself, to which rules of procedural default apply." 523 U.S. at 376. Accordingly, the Illinois Supreme Court's reliance on a

procedural rule to bar a cause of action does not violate international law any more than it would violate American constitutional law.

In sum, the Illinois Supreme Court acted within this Court's precedents. Accordingly, this Court should not undertake to review the decision of the Illinois Supreme Court.

III.

THE CONSUL GENERAL CANNOT BRING A PRIVATE RIGHT OF ACTION IN UNITED STATES COURTS TO SET ASIDE A CRIMINAL CONVICTION AND SENTENCE FOR VIOLATION OF CONSULAR NOTIFICATION PROVISIONS AND, THEREFORE, THIS COURT SHOULD NOT REVIEW THE DECISION OF THE ILLINOIS SUPREME COURT.

The Consul General does not have standing to attack Madej's conviction and death sentence for violation of consular notification provisions. As this Court held in *Breard v. Greene*, 523 U.S. 371, 377 (1998), "neither the text nor the history of the Vienna Convention clearly provides a foreign nation a private right of action in the United States' courts to set aside a criminal conviction and sentence for a violation of consular notification provisions." *See also Federal Republic of Germany v. United States*, 526 U.S. 111, 112 (1999). This constitutes yet another reason this Court should not undertake to review the decision of the Illinois Supreme Court.

CONCLUSION

For all the reasons stated above, Respondent respectfully requests that this Honorable Court deny the petition for writ of certiorari.

Respectfully submitted,

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